COURT OF APPEALS
DECISION
DATED AND FILED

March 17, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2448-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

PATRICK R. BELL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed.*

SCHUDSON, J.[1] Patrick R. Bell appeals from the judgment of conviction entered after he pleaded guilty to possession of a controlled substance (marijuana). Bell argues that "the police did not articulate a reasonable suspicion

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

which would justify the stop," pursuant to § 968.24, STATS., and, therefore, that the trial court erred in denying his suppression motion. This court affirms.[2]

At approximately 9:45 a.m., on Monday, October 4, 1996, while patrolling in their marked police squad car, City of Milwaukee Police Officers Alvaro Olaciregui and David Lazewski observed Bell walking up and down North 13th Street in Milwaukee. According to Officer Olaciregui, as the squad car approached, Bell would appear nervous and "would turn around and walk away real[ly] fast." This occurred three times during a fifteen-minute period in which the officers intermittently observed Bell.

On seeing Bell react this way the third time, the officers parked the squad near where Bell was standing, exited their squad and approached him. Officer Olaciregui testified that the area was known for drug trafficking and that, when he asked Bell for his name to investigate why he was in the area, Bell told them that he lived down the street and "that he was just hanging out." Officer Olaciregui testified:

> Upon hearing [Bell's] name, I went through some information that I obtained on the street. I asked him a particular question. I said you are the Patrick Bell that I hear is selling marijuana on the street.

[2] For purposes of this appeal, this court accepts that the State, by not addressing the issue, implicitly concedes that Bell established that he was seized and, therefore, that this was a ***Terry*** stop, requiring the officers to have reasonable and articulable suspicion. *But see* ***Florida v. Bostick***, 501 U.S. 429, 434-35 (1991) ("[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual … as long as the police do not convey the message that compliance with their request is required."); *see also* ***Terry v. Ohio***, 392 U.S. 1, 19 n.16 ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.").

Bell replied that he did not sell drugs, but when Officer Olaciregui asked him if he had any drugs on him, Bell told him that he did and pulled a marijuana cigarette out of his shirt pocket.[3]

Bell argues that the police did not articulate a reasonable suspicion to question him regarding his conduct and, therefore, that the trial court erred in denying his motion to suppress.

Law enforcement officers may stop an individual only if they have reasonable suspicion, grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed, is committing, or is about to commit a crime. *See* ***State v. Harris***, 206 Wis.2d 243, 259, 557 N.W.2d 245, 252 (1996); *see also* § 968.24, STATS., and ***State v. Krier***, 165 Wis.2d 678, 678, 478 N.W.2d 65, 65 (Ct. App. 1991) (holding that when a person's activity can constitute either a civil forfeiture or a crime, a police officer may validly perform an investigative stop pursuant to § 968.24, STATS.). On review of a denial of a suppression motion, the trial court's findings of fact will be upheld unless they are clearly erroneous. *See* § 805.17(2), STATS. Whether those facts satisfy the constitutional requirement of reasonableness under the Fourth Amendment, however, presents a question of law subject to *de novo* review. *See* ***State v. Gaulrapp***, 207 Wis.2d 598, 603, 558 N.W.2d 696, 697 (Ct. App. 1996).

Here, the trial court ruled that, given the area's reputation for drug trafficking, Bell's repeated efforts to walk away or avoid the officers, and his

[3] Although, on appeal, Bell mentions that "the officer pursued an inculpatory line of questioning," he does so only to help establish that he was not free to leave. Neither in the trial court nor on appeal has Bell challenged the scope of police questioning as moving beyond that permitted under § 968.24, STATS.

nervous demeanor, the officers had reasonable suspicion to stop him and question him about his behavior. Although the facts present a painfully close call, this court agrees with the trial court's conclusion.

When the officers stopped Bell, they reasonably suspected he was loitering in a drug-dealing area—behavior they knew to be consistent with drug-dealing activity. *See* ***State v. Morgan***, 197 Wis.2d 200, 211-14, 539 N.W.2d 887, 892-93 (1995) (An officer's perception of an area as "high crime" is a relevant factor in assessing the "totality of the circumstances" test for conducting a ***Terry*** stop.). They had observed Bell walking without any apparent purpose or direction in an area the officers knew to be a drug-dealing area; they observed him intermittently for a fifteen-minute period; and they noticed that when he saw their squad car approach, he walked in the opposite direction.

Bell contends that these facts are similar to those of ***State v. Young***, 212 Wis.2d 417, 569 N.W.2d 84 (1997), in which this court concluded that the police lacked reasonable suspicion to justify a stop. In ***Young***, however, this court noted that "'the appellant's activity was no different from the activity of other pedestrians in that neighborhood,'" ***id.*** at 428, 569 N.W.2d at 90, (quoting ***Brown v. Texas***, 443 U.S. 47, 52 (1979)), and further, that the conduct the officer considered suspicious was "conduct that large numbers of innocent citizens engage in every day for wholly innocent purposes, even in residential neighborhoods where drug trafficking occurs." ***Young***, 212 Wis.2d at 429-30, 569 N.W.2d at 90-91. Here, by contrast, Officer Olarciregui testified that Bell's behavior was different from that of other pedestrians; that unlike other citizens, "every time [Bell] saw me he would walk around [sic] from the area like he didn't want to be there when I was there." And when the prosecutor asked him whether Bell appeared nervous, Officer Olarciregui replied: "Yes…. Even when he saw

me a block away, he would turn around. He looked on Juneau [Avenue], saw a squad, made a U-turn, started to walk down 13th Street. It just didn't seem like normal behavior."

Accordingly, this court concludes, based on the totality of the circumstances, that the trial court correctly denied Bell's motion to suppress.[4]

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

[4] This court is not insensitive to the concerns discussed in the law review article cited by Bell. *See* David L Harris, *Factors for Reasonable Suspicion: When Black and Poor Means Stopped and Frisked*, 69 IND. L.J. 659 (1994). Indeed, affirmance of the trial court does not necessarily imply approval of police conduct. As the law review article points out, however, police conduct that may be improvident for any number of reasons may also be constitutional.